

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE  
(November 19, 1997 Session)

**FILED**  
**April 14, 1998**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

WILLIAM R. CROSS, )  
 )  
 Plaintiff-Appellant, )  
 )  
 v. )  
 )  
 MAHLE, INC., )  
 )  
 Defendant-Appellee, )  
 )  
 and )  
 )  
 DINA TOBIN, Director of Workers )  
 Compensation Division, Department )  
 Labor, as Custodian of the Second )  
 Injury Fund, and CHARLES W. )  
 BURSON, Attorney General of )  
 Tennessee, )  
 )  
 Defendant-Appellee. )

HAMBLEN CIRCUIT )  
 Hon. Ben K. Wampler, )  
 Judge. )  
 No. 03S01-9704-CV-00038 )

For Appellant:

C. Edward Daniel  
Whelchel, May & Daniel  
Knoxville, Tennessee

For Appellee, Mahle, Inc.:

James T. Shea, IV  
Baker, McReynolds, Byrne, O'Kane,  
Shea & Townsend

For Appellee, Second Injury Fund:

John Knox Walkup  
Attorney General and Reporter

Sandra E. Keith  
Assistant Attorney General  
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court  
William H. Inman, Senior Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employee contends the evidence preponderates against the trial court's finding that his heart attack was not a compensable injury by accident under the workers' compensation laws of Tennessee. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Cross, was injured in an automobile accident in 1994 and left with a partial disability. In order to accommodate that disability, the employer placed him in a light duty position as a security guard, where he worked in an air conditioned guard shack. He would leave the shack from time to time to check the identity of a vehicle driver, a distance of twenty to twenty-five feet from the shack.

In July of 1995, he was prescribed nitroglycerin for chest pain. On the evening of August 17, 1995, he experienced slight chest pain at home. The next day, a very hot one, he felt chest pain at work. The pain gradually increased in severity and did not subside for several hours, although he did not engage in any unusual physical exertion or stress. He left work and went home, then to the hospital, accompanied by his wife.

Dr. Kenneth Allum treated the claimant. He testified that the claimant had suffered a minor heart attack and that going in and out of the guard shack in hot weather could have been the cause. Dr. Alfred Beasley disagreed on both counts, from medical records. Both doctors are board certified in internal medicine. Dr. Beasley is also a cardiologist. The medical records reflect the claimant as having poorly controlled diabetes, as being overweight and a heavy smoker and having a family history of coronary artery disease.

The trial judge prepared and filed an exhaustive opinion in which he found that the claimant had failed to carry the burden of proof as to causation, and dismissed the claim. Appellate review is de novo upon the record

of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2).

Varying results have been reached in the courts of Tennessee where claims involved injuries from heart attack. The results depend on the facts and circumstance of each case. It has been held, however, that the mere fact that an employee suffers a heart attack at work does not mean the injury is compensable. Travelers Insurance Co. v. Googe, 217 Tenn. 272, 397 S.W.2d 368 (1965). It has also been held that a heart attack is compensable if it can be shown by competent evidence that the attack was precipitated by the physical activity and exertion of the injured employee's work. Wingert v. Government of Sumner County, 908 S.W.2d 921 (Tenn. 1995).

The competent evidence with respect to those elements in this case is, at best, speculative and conjectural. Moreover, from the competent medical proof, there is considerable doubt as to whether the claimant even suffered a heart attack at all. Accordingly, the evidence fails to preponderate against the judgment of the trial court. Additionally, we are aware of no rule requiring the trial judge to accept the contradicted testimony of a treating physician, as the claimant contends.

The judgment of the trial court is affirmed. Costs are taxed to the plaintiff-appellant.

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Joe C. Loser, Jr., Special Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

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William H. Inman, Senior Judge



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WILLIAM R. CROSS,	)	Hamblen Circuit
	)	No. 95-CV-362
Plaintiff/Appellant,	)	
	)	Hon. Ben K. Wexler, Judge
v.	)	
	)	
MAHLE, INC.,	)	NO. 03S01-9704-CV-00038
	)	
Defendant/Appellee.	)	Affirmed

**JUDGMENT ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made

the judgment of the Court.

Costs are taxed to the plaintiff-appellant and his surety, for which execution may issue if necessary.

It is so ordered this \_\_\_\_\_ day of April, 1998.

PER CURIAM

Drowota, J., Not Participating